

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

and

TORY'S ROOFING & WATERPROOFING,  
INC.,

Respondent.

CASE NO. OSH 2009-9

ORDER NO. 328

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial/settlement conference in this matter held by the Hawaii Labor Relations Board (Board) on June 29, 2009, and attended by J. Gerard Lam, Deputy Attorney General, for Complainant, and Michael W. Tory, for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1 29 CFR 1926.95(a)

Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$875.00, resulting from Inspection No. 311435036, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1926.95(a) was violated because:

Two employees, who were using nailguns to install asphalt shingles onto the roof structure were not using eye protection. Employees are exposed to potential eye injuries from nails ricocheting.

2. Citation 1, Item 2 29 CFR 1926.501(b)(10)

Whether Citation 1, Item 2, including the characterization as "Serious" and the associated penalty of \$700.00, resulting from Inspection No. 311435036, was valid and proper?

Citation 1, Item 2 alleged:

29 CFR 1926.501(b)(10) was violated because:

Six employees, who were working on a one story residential roof, were not protected from falling to ground level. The height of the roof eave was 8 feet above ground level and the pitch of the roof was 4/12 vertical to horizontal. Without proper fall protection, the employees were potentially exposed to serious fall injuries.

3. Citation 2, Item 1 29 CFR 1926.502(d)(17)

Whether Citation 2, Item 1, including the characterization as "Other", resulting from Inspection No. 311435036, was valid and proper.

Citation 2, Item 1 alleged:

An employee, who was wearing a red, full body harness, was observed to have the attachment point of the full body harness in the center of his lower back near waist level.

4. Whether the defense of unpreventable employee misconduct applies in this case.

- B. The deadline for the parties' final naming of witnesses is **July 31, 2009**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **August 28, 2009**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice

depositions sufficiently in advance of the cut-off date to comply with this requirement.

- D. Trial in this matter is scheduled for **October 19, 2009 at 9:30 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, June 30, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Michael W. Tory  
J. Gerard Lam, Deputy Attorney General